

Town of Hamburg  
Board of Zoning Appeals Meeting  
July 11, 2017  
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, July 11, 2017 at 7:00 P.M. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Brad Rybczynski, Vice-Chairman Shawn Connelly, Commissioner Louis M. Chiacchia, Commissioner Bob Ginnetti, Commissioner Nicole Falkiewicz, Commissioner Ric Dimpfl and Commissioner Laura Hahn.

Others in attendance included Attorney Mark Walling, Board of Zoning Appeals Attorney.

Chairman Rybczynski asked for a moment of silence to honor our fallen men and women in the military.

Commissioner Chiacchia read the Notice of Public Hearing.

**Tabled Application # 5613** Once Upon a Child – Requesting one (1) area variance and one (1) use variance for wall signage at 4271 Lake Avenue.

It was determined that the applicant had withdrawn this application.

**Application # 5631** Barbara Scheffler – Requesting an area variance for a proposed detached garage at 1582 Schoellkopf Road.

Barbara Scheffler, applicant, stated that she plans to remove the existing shed on the property and would like to construct a 1.5-car detached garage. She stated she wants to put her car, lawnmower, bicycle, etc. in the new garage.

Ms. Scheffler stated that she does not have neighbors on either side of her property.

In response to a question from Mr. Connolly, Ms. Scheffler stated that she has not spoken to her adjacent property owners.

Mr. Chiacchia stated that the applicant does not currently have a garage, and it would be nice for her to have one. He further stated that her proposed garage would not be a deterrent to the neighborhood.

**Findings:**

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5631.

On the question:

Mr. Connolly reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – No, because this is a unique triangular property.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, because there is a limited amount of homes on the applicant's street, and the one (1) home that is close is considerably away from the road and out of sight.
3. Whether the request is substantial – It is substantial.

4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – Based on the unique nature of this property, it could be argued one way or the other.

All members voted in favor of the motion. **GRANTED.**

**Application # 5632** Daniel Mazur – Requesting two (2) area variances for a proposed detached garage at 5144 Lakeshore Road

Dan Mazur, applicant, stated that he would like to build a garage, and the Town requires that it be 35 feet from his front property line. He stated that this would mean that the garage would have to be 48 feet from the white line on Route 5 (because of the right-of-way). Chairman Rybczynski asked Mr. Mazur if an easement runs through his property, and Mr. Mazur responded that he was unsure.

Mr. Mazur stated that if one travels 1.5 miles in each direction on Route 5 from his property, one sees numerous properties with garages, houses and sheds that are substantially closer to the road than what he is currently proposing. He submitted a list of 15 properties that have structures closer to the road than what he is proposing. He noted that some of these properties are old, and some are not old.

Mr. Mazur stated that having to locate his garage 35 feet from his property line would result in an incredible waste of lawn and green space because anything on the east side of the garage would be unusable to him.

Mr. Mazur stated that he does not think it is unreasonable to build something much closer to the white line of Route 5 than what the Town Code allows, especially since there are many properties in the area that have done that already.

Chairman Rybczynski stated that the proposed structure would not alter the essential character of the neighborhood, and it actually would be more conforming to the existing neighborhood from the evidence presented. He stated that the applicant was not asking for anything out of line.

Chairman Rybczynski stated that Mr. Mazur had already addressed the five (5) area variance criteria by showing that the proposed structure will not alter the character of the neighborhood, the variance is not substantial and the applicant cannot achieve his goal any other way. He stated that the applicant's hardship was not self-created but was imposed by the Town with the Code restrictions.

Mr. Mazur stated that there are as many properties that do not conform as there are that conform in the vicinity of his property.

In response to a question from Mr. Connolly, Mr. Mazur stated that his existing attached garage is slightly less than 400 sq.ft. He further stated that he plans to convert that space into living space once the new detached garage is built.

Mr. Connolly stated that the applicant is requesting a 20% increase in what is allowed. He asked Mr. Mazur why it needs to be so big. Mr. Mazur responded that he has three (3) cars, a riding mower, a hand mower, a snow blower, lawn furniture, bags of pellets and a grill that must be stored.

Mr. Mazur that there are numerous properties in the area that have 4+ car garages.

Chairman Rybczynski stated that most of the properties in the area are existing non-conforming. He stated that he empathized with the applicant and his desire to locate the new structure closer to the road.

Mr. Connolly stated that his concern is with both the size and location of the structure. He stated that considering the applicant already has an existing attached garage, if he was to construct the detached garage at 850 sq.ft. as required by the Code, he would have 1,250 sq.ft., which generally would be considered adequate for storage. He stated that because the applicant's property is fairly large, he has the ability to move the garage back to where it should be placed as required by the Code.

In response to a question from Mr. Connolly, Mr. Mazur stated that he has spoken to five (5) of six (6) nearby property owners, and two (2) have problems with his project.

Mr. Mazur stated that he has to construct the new garage before he converts the attached garage to living space. He further stated that he plans to demolish the existing 100 sq.ft. shed on the property.

Chairman Rybczynski stated that almost everyone wishes he had built a larger space for storage.

Mr. Chiacchia stated that the property owner adjacent to the applicant (5140 Lakeshore Road) has a detached garage that is the same distance to the road as what the applicant proposes. He stated that the property owner at 5140 Lakeshore Road does not have an attached garage, nor does he have any room to construct an attached garage. He stated that he does not feel that the location of the garage would impede the line of sight getting out onto Lakeshore Road.

Mr. Chiacchia stated that the applicant does not have the room to add on to his existing attached garage.

Mr. David Woelfling, 5168 Lakeshore Road, stated that he has a carriage house near the road that has been there for over 50 years. He stated that it was originally a two-car garage, and he has since converted it to a residence for his daughter.

In response to a question from Chairman Rybczynski, Mr. Woelfling stated that he converted the carriage house to living space around 2000.

Mr. Woelfling stated that he was not so much concerned about the location of the proposed garage. He stated that some people rent storage.

Chairman Rybczynski stated that the applicant wants to store items that he uses on a weekly basis.

Mr. Woelfling stated that he owns the same kinds of things that the applicant has, but some people decide to preserve the character of the neighborhood and recognize that the properties should not be overloaded. He stated that storing things elsewhere is a reasonable alternative to building a 44' barricade to the street.

Mr. Woelfling stated that the applicant can achieve his storage goals in other ways, and if the applicant built a garage that was within the requirement of the Code, he would still have a new 3-car garage.

Mr. Woelfling asked if the proposed garage could be turned so that the long end is parallel to the side property lines, which would improve its nature and character. He stated that as proposed, the new garage would alter the character of the neighborhood.

Mr. Woelfling stated that the applicant's request is substantial because it is significantly larger than what is allowed, and the garage could be scaled back in size to something that is more rational.

Mr. Woelfling stated that the applicant's hardship is self-created because there are other ways to store items.

Mr. Woelfling asked the Board to consider the alternatives and keep the proposed garage within the confines of what is typical for this neighborhood.

Mr. Mazur stated that he is asking for a garage that would be 1/2 a car larger than what the Town allows. He stated that he does not feel that is a large deviation from the Code.

Mr. Mazur stated that the garage will be landscaped. He stated that there is a gray sided garage in the area, and his garage will look a lot like that one.

Mr. Mazur showed Board members an alleged photo of Mr. Woelfling's garage and stated that he does not think it is particularly good looking. He stated that he has never complained about it, and it is approximately twelve (12) feet from the property line.

Mr. Mazur stated that Mr. Woelfling's structure is a 2 1/2 car garage with an apartment above it.

Mr. Woelfling stated that his structure is not as described by Mr. Mazur.

Chairman Rybczynski informed Mr. Woelfling that he (Mr. Woelfling) has a non-conforming structure on his property that he converted in 2000. He informed Mr. Woelfling that he is not permitted to have a residential property on his property.

Mr. Woelfling stated that Chairman Rybczynski was incorrect.

Chairman Rybczynski informed Mr. Woelfling that he cannot have an apartment on his property. He informed him that because it has a kitchen, the apartment cannot be there.

Mrs. Woelfling stated that the living space was fully permitted in 2000.

Ms. Donna Gonzer, 5156 Lakeshore Road, stated that her family has similar items to what Mr. Mazur has and agreed that everyone fills whatever storage space they have, no matter how large the garage. She stated, however, that this does not mean that a large garage will look good in the neighborhood. She stated that the proposed 44' long building looks like an Uncle Bob's storage unit more than a garage.

Ms. Gonzer stated that a paved area would have to be added if the garage is built as proposed in order to accommodate vehicles that need to get in to it from the existing driveway.

Ms. Charice Callahan, 5150 Lakeshore Road, stated that she is an adjacent property owner and has no issue with the applicant locating the garage closer to the road than what is permitted. She stated that she feels that the size of the proposed garage would alter the character of the neighborhood. She stated that Mr. Mazur owns a home two (2) miles away that is vacant, and she asked why he cannot store his pellets, snow blower, etc. there in the summer time.

Ms. Callahan stated that she is concerned that the proposed garage would not match the home, and because of that it would look more like a storage unit than something that goes with the home. She stated that most of the garages in the area that are close to the road match the residential property on which they are located.

Ms. Callahan stated that she does not understand why the garage cannot be moved so that it is not parallel to the road.

Mr. Mazur stated that he does not plan to build an ugly structure.

Ms. Gonzer stated that the applicant can achieve his goal in another way.

Mr. Mazur stated that he would consider a compromise whereby he would build a 40' X 24" garage instead of the requested 44' X 24".

In response to a question from Mr. Chiacchia, Mr. Mazur stated that the garage doors would face his home for security reasons, and he would need a 15' wide concrete pad outside the garage doors to back out of the garage 90 degrees to get to the driveway.

Mr. Chiacchia stated that the garage will eliminate a lot of green space.

In response to a question from Mr. Chiacchia, Mr. Connolly stated that the variance request is 20% over what is permitted by Code. He stated that generally when one looks at case law and past practices, anything above 10% - 15% is considered excessive, and each individual Board member can have his/her own opinion on this. He further stated that whether a request is excessive or not is also based on the property's location, size, etc.

### **Findings:**

Chairman Rybczynski made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5632 with the following condition:

- The existing shed on the property will be removed within three (3) months of the completion of the garage.

Chairman Rybczynski reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – No, because the applicant has stated that this location best meets his needs regarding saving green space. This location and size is the most feasible to the applicant.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, this neighborhood is riddled with garages, multi-use buildings and various structure that are near to the road that serve the same purpose and that the Board has approved in the past few years. The applicant wants to preserve green space between the home and the garage and enjoy the property closest to the water.
3. Whether the request is substantial – It could be argued that it is substantial, but it is 206 feet. If the structure was 206 sq. ft. smaller, most people would not be able to recognize the difference between 850 sq. ft. and 1,056 sq.ft.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – It could be argued that it is self-created, but the applicant stated that he needs an extra car in order to perform the duties and requirements of his position, his partner needs a vehicle, and he needs to care for the property in an expedient manner. If someone is rarely home and works two (2) jobs and wants to cut his lawn real quick, it would make it difficult to have to go down the street two (2) miles or go to the storage facility to get his riding mower. There would be an adverse effect if the applicant were unable to access the very machinery and vehicles he needs to clear his driveway or upkeep his property or heat his home.

As the vote on the motion was five (5) ayes and two (2) nays (Mr. Connolly and Ms. Falkiewicz) the motion passed. **GRANTED.**

**Application # 5633** Lynne Dillon – Requesting an area variance for a proposed fence at 5852 Old Lakeshore Road.

Lauren Dillon, 5848 Old Lakeshore Road, stated that she and her husband reside just west of the proposed fence location. She stated that her mother, Lynne Dillon, is the applicant and resides adjacent to her (Lauren's) home, but she (Lauren) is the one who requested that the fence be erected.

Ms. Dillon stated that other than the residents of 5860 Old Lakeshore Road, she and her husband, as well as her mother, are the only ones who would be able to see the proposed fence.

Ms. Dillon stated that she is requesting permission to build the fence for safety and privacy reasons. She stated that her son rides his bike along the driveway to 5852 Old Lakeshore Road, which is approximately twenty (20) feet from the existing chain link fence. She stated that the chain link fence is in disrepair, and the resident at 5860 Old Lakeshore Road owns two (2) dogs that sometimes viciously charge the fence when her family is walking along the driveway.

Ms. Dillon stated that the other reason she wants the fence is for privacy for her family, as well as for her mother. She stated that the fence will not change the character of the neighborhood because the area is heavily wooded with brush and trees.

Ms. Dillon stated that the fence will not be visible from the street. She stated that the land slopes down from the street to the lake, and that is why she is requesting the eight-foot fence. She stated that she would be willing to drop the fence height to six (6) feet as it gets closer to the road.

Ms. Dillon stated that she also needs the fence for a sound barrier, as she believes that the resident at 5860 Old Lakeshore Road is operating a car detail and washing business, which results in machines running late into the evenings.

Mr. John Sullivan, 5848 Old Lakeshore Road, stated that the residents of 5860 Old Lakeshore Road throw their garbage over the existing chain link fence, and he is also concerned about the safety of his son.

In response to a question from Mr. Connolly, Mr. Sullivan stated that the residents of 5860 Old Lakeshore Road have lived there for approximately twenty (20) years.

In response to a question from Mr. Dimpfl, Mr. Sullivan stated that the overall length of the proposed fence would be 244 feet. He stated that they would like to have 196 feet of the fence be eight (8) feet high and the rest six (6) feet high.

Mr. Sullivan stated that the new fence would not be any closer to the road than the existing chain link fence is currently.

In response to a question from Mr. Connolly, Ms. Dillon stated that they have not spoken to the residents of 5826 and 5866 Old Lakeshore Road.

In response to a question from Mr. Chiacchia, Mr. Sullivan stated that the four-foot high chain link fence that is currently on his property will be removed and hopefully replaced with the requested wooden fence.

**Findings:**

Mr. Connolly made a MOTION, seconded by Ms. Hahn, to approve Application # 5633 with the following condition:

- The first 48 feet of fencing from the road will be six (6) feet high, and the remaining 196 feet of fencing will be eight (8) feet high.

On the question:

Mr. Connolly reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – No, based on the circumstances of the situation.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, because of the location and size of the property. There are already many fences in this area that are as high if not higher than what is proposed.
3. Whether the request is substantial – It could be argued that it is substantial, considering the request is to double the allowed height of part of the fence and increase the other part of the fence by 25%..
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – The fence is not needed, but based on the applicants' testimony it could be argued that it is not self-created.

All members voted in favor of the motion. **GRANTED.**

**Application # 5634** Merle Whitehead Properties LLC – Requesting a use variance and an area variance for the replacement of signage at 3674 Commerce Parkway

Ms. Lisa Avery from Realty USA stated that Realty USA is a tenant at 3674 Commerce Parkway. She stated that the company name is changing, so they want to change the wording on the existing signage to reflect that.

A representative of the applicant stated that the property sits approximately six (6) feet below the road, and therefore the sign is technically higher than what the Code allows.

In response to a question from Mr. Connolly, the representative stated that the sign is not being enlarged or made smaller.

Mr. Connolly confirmed that the reason the variance is required is that the sign was non-conforming prior to the company name being changed.

**Findings:**

Mr. Connolly made a MOTION, seconded by Mr. Ginnetti, to approve Application # 5634.

On the question:

Chairman Rybczynski reviewed the use variance criteria as follows:

1. Cannot realize a reasonable return as shown by competent financial evidence – This is a completely unique situation where the very little latitude the Board has can be utilized in looking at a reasonable return for this particular instance, since the sign was previously approved and was non-conforming, and the applicant simply wants to replace the sign.
2. Alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood – It is unique because this is one of the very few pole signs that is still in the District, and all the applicant wants to do is change the name on the sign. Almost every other property looking for this type of variance would want to change the sign's structure or location.

3. Whether the requested variance will alter the essential character of the neighborhood – No, because this pole sign has been there for several years and will be the exact same sign in the same location.
4. Whether the alleged hardship has been self-created – It could be argued that the hardship is self-created in that the applicant is choosing to change its name, but it has not been self-created because the structure is not changing, nor is its location or size changing. The hardship is that the name of the business has changed, and the only way the applicant can change the name without completely removing the sign is to ask for a variance.

Mr. Connolly reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – No, because the sign is currently non-conforming, and there is no other method feasible to achieve the goal of keeping the sign there.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, this is the same sign that has been there for years.
3. Whether the request is substantial – No, because the size and location of the sign is the same. The only difference is that the sign will have a new name on it.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – It could be argued that it is self-created in that the applicant did not have to change its name and could keep the sign as it currently is with the wrong name on it, but realistically the applicant wants to and should change the name, and because the sign was already non-conforming it is a reasonable request.

All members voted in favor of the motion. **GRANTED.**

**Application # 5635** Andrea Bowden – Requesting two (2) area variances for a proposed garage addition at 4027 Staley Drive

Mr. Paul Wodzinski, contractor for the applicant, stated that Ms. Bowden would like to construct a garage addition on the back of the home. He noted that she needs two (2) area variances in order to obtain a building permit.

Mr. Chiacchia noted that the adjacent property owner closest to where the addition would go (Richard Wolanin) has no objection to the project.

**Findings:**

Mr. Chiacchia made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5635.

On the question:

Mr. Connolly reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – No.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No.
3. Whether the request is substantial – No.
4. Whether the request will have adverse physical or environmental effects – No.

5. Whether the alleged difficulty is self-created – No.

All members voted in favor of the motion. **GRANTED.**

**Application # 5636** Paul & Diane Noel – Requesting an area variance for a proposed detached garage at 3638 Old Lakeview Road.

Mr. Michael Grifa stated that he is the owner of the property and is the person who requested the variance. He stated that he recently purchased this home, which is an 1850s farmhouse, and he would like to construct a detached garage that is in keeping with the look of the home and its history.

It was determined that the size of the proposed garage meets the Code, but the proposed height does not.

**Findings:**

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5636.

On the question:

Ms. Falkiewicz reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – No, due to the proposed roof style.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, this will enhance the property.
3. Whether the request is substantial – This could be viewed either way.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – No.

All members voted in favor of the motion. **GRANTED.**

Mr. Dimpfl made a MOTION, seconded by Ms. Falkiewicz, to approve the minutes of June 6, 2017. All members voted in favor of the motion.

Mr. Dimpfl made a MOTION, seconded by Ms. Hahn, to adjourn the meeting. All members voted in favor of the motion.

The meeting was adjourned at 9:00 p.m.

Respectfully submitted,

L. Michael Chiacchia, Secretary  
Board of Zoning Appeals

DATE: July 30, 2017